



Improving RSQ – Draft Product Disclosure Retail Service Price and Cost Guidelines

Spark New Zealand

Public Version

Commerce Commission

15 March 2024

Introduction

1. Spark welcomes the opportunity to comment on the draft Retail Service Price and Cost Guidelines ('Guidelines'). Our understanding is that the Guidelines should be seen as a proposal for discussion rather than a final proposal. We welcome this approach as it gives industry a chance to review and comment on the practicalities of the detailed proposals.
2. While the consumer research provides helpful context, we would value more discussion at the principles level to ensure we fully understand the Commission's objectives. Understanding the scope of the issues the Commission is looking to remedy, and how widespread they are, would help us co-design proportionate solutions which would provide the best outcome for consumers.
3. We set out below our high-level submissions on the Guidelines as a whole, before turning to our comments on specific topics covered by the Guidelines.

Retail Service Marketing and Price Communications

Consumer Information Overload

4. As the Commission finalises its product disclosure requirements, we ask that it gives consideration to the cumulative effect of all of the RSQ information disclosure requirements on the overall intelligibility and usefulness of information for consumers. Like the Commission, we want to ensure that consumers have access to the information they need to make properly informed decisions, and that the information presented to them helps, rather than hinders, achievement of this objective. In this context, it should be acknowledged that providing too much information may create, rather than reduce, customer confusion in just the same way that providing too little information can.
5. Providers are already required to present a great deal of essential information to consumers in their marketing and buy journeys. Additional disclosure obligations add to this and, at some point, consumer transparency benefits will be offset by the loss of clarity. We have previously shared with the Commission an audio file of the disclosures which are read out to customers who purchase a Spark broadband product by phone. This currently extends to three and a half minutes – longer in some cases, depending on the combination of products bought.
6. Further, we note that there can often be a tension between market innovation and regulation: retail regulation risks stifling the range and nature of products available to consumers if it is too prescriptive, and removes opportunity for providers to differentiate.
7. We encourage the Commission to test the current suite of disclosure obligations, taking into account providers' legal obligations as well as those implemented via RSQ Codes, to ensure that the cumulative effect of additional information disclosures is to improve utility and intelligibility for consumers.
8. We also suggest that the Commission work with industry to test examples of implementations of the Guidelines' proposals relating to average monthly pricing, total minimum price, offer summaries and ETFs to see how well these are understood by consumers and, as necessary, refine the proposals in response. We would be happy to assist the Commission in preparing a survey and focus group sessions.

Application of Guidelines To Other Parties That Present Product Information

9. The Guidelines are targeted at RSPs, but our view is that they should clearly apply to all parties who market or publish information about telecommunications services to consumers. This should include price comparison websites, who promote themselves as having an independent view of the market.
10. The purpose of the Guidelines is to ensure that consumers can easily compare products between providers, so it is appropriate that the rules relating to marketing and product descriptions also apply to these sites – whether through their voluntary compliance with the Commission’s Guidelines or their own industry Code modelled on the Guidelines.
11. One approach could be to be explicitly broaden the scope of marketing so it includes third party agreements made by providers which covers marketing services to end-users.

Early Termination Fees (ETFs)

Objective

12. While we agree that it is important that customers understand where their products or services attract an ETF, we are unsure of the problem the Commission is intending to address:
 - a. if customers don’t know their plan has ETFs, then the marketing requirements and the requirement to include ETFs in the Offer Summary is an important consideration.
 - b. if customers don’t know what their ETF is, then there are a range of different ways providers could help customers gain access to this information.

Structures of ETF

13. In our experience, customers typically prefer simpler, more intuitive pricing constructs and may prefer the certainty of a smaller number of clear step-changes in the ETF over time, rather than detailed daily or monthly calculations. Fewer, clearer steps allow the customer to calculate and budget for leaving their service early – eg, ETFs presented in 3 month increments.
14. The Commission’s examples of ETF tables demonstrates how complex ETFs can be, particularly in the example with the 50% off up-front fees where the ETFs rise and fall over time. It is this complexity that drives customers needing help to understand what ETFs apply. The more granular the ETF calculation is, the harder it is for customers to calculate.

Information On the Bill vs ETF Calculator

15. Providers are limited as to the information they can put on their bills. Our bills are typically catalogue-based, where a customer buys a product and the value of that product is put on the bill. The requirement to put the customer’s current ETF on a bill requires a live calculation of the ETFs, which is not a functionality we have available today. Any changes to billing systems are costly, time consuming, and risk unintended consequences.
16. Instead, we propose a general obligation to provide a way for customers to find out their current ETFs, with flexibility in how providers meet the requirement; for example, some may

choose to do this through billing information, while others may prefer to create other solutions.

Marketing

17. The Guidelines propose that, if ETFs apply, they should be disclosed prominently in *any* marketing communication related to the offer. While this is limited to the fact that ETFs apply, rather than value of the ETFs, we suggest that, if there is a requirement to disclose, it is limited only to marketing which includes price and where there is adequate space to include the additional wording.

Application

18. The Guidelines should only apply to new plans coming into market from the date the Guidelines come into force. We have a number of legacy plans, and it would be complex to create ETF checkers and information for them.
19. Creating an ETF calculator is not a simple task. We would need to perform a feasibility study to estimate the likely costs for both a standalone generic checker and a checker embedded in our websites and our app.
20. It will take us time to review existing ETFs in the light of the final Guidelines. Additionally, we may need to notify customers if we make changes to their existing ETFs. The timeframe and process for this should be factored into the required implementation time.

Average Monthly Price (AMP)

Approach

21. Consumers have told us that weekly and fortnightly pricing is beneficial to them where budgets are tight, as they want to align their payment with money entering their account (such as via a weekly salary or benefit payment) to help with budgeting.
22. The AMP requirements may result in providers no longer offering non-monthly pricing. Disincentivising providers from offering non-monthly payment periods disproportionately disadvantages customers who value the convenience of payments aligned to weeks, rather than calendar months.

Confusion For Customers Over Monthly Payments

23. One challenge with showing the AMP to customers on non-monthly plans is that it may suggest that key elements of the plan, such as billing, data rollover, and other events will also occur monthly rather than the plan period. We expect this will drive an increase in billing queries and complaints, as:
 - a. Where discounts are front-loaded (eg half-price rental for the first few billing periods, upfront credits), the billed amounts will be lower than the AMP initially, then higher once the discounts no longer apply.
 - b. Customers will pay more than the AMP in the first few months if there are upfront costs that apply.

Increased marketing complexity may confuse rather than simplify

24. Marketing services at two price points will be complex and has the potential to confuse customers – especially if both prices are featured prominently. Further, it may not be practical to include the AMP in all advertising formats (digital banners, social, search, TV commercials, etc).
25. It would be helpful if the Guidelines clearly set out where the AMP is not expected to be included, for space or intelligibility reasons. For example, the TCF Broadband Marketing Code provides examples of how speed and performance disclaimers can be presented where space and readability is extremely limited, such as radio adverts, TV adverts or billboard.
26. We encourage the Commission to test mock-ups of marketing with consumer focus groups to understand whether the proposed approach provides the expected benefits to customers. We are happy to work with the Commission to produce some examples and testing those with consumers.

Website Information

27. In our view, displaying two price points on our website is also likely to lead to customer confusion. Our websites are designed for accessibility, and we often face physical character limits. We also need to make sure pages can be clearly viewed on mobile devices. Additional elements will complicate the design and clarity of messaging.
28. It is not a trivial task to add additional elements to our online pages, as many items are hardcoded into our websites directly or rely on third party back-end systems tailored to the existing website structure. These systems will need to be updated to include the extra field, and populated so the right information flows to the webpage.
29. The complexity of these changes should be factored in when determining the timeframes for compliance and can form part of further discussions.

Promotions and Discounts

30. Promotional discounts are often short-term activities and are subject to frequent change. Incorporating promotional discounts into the AMP calculation will increase the frequency that the average monthly discount price needs to be updated.
31. Promotional discounts can take many forms and, depending on their construct and customer eligibility, the same discount could apply differently to different product variants. This could result in multiple AMPs applying to a single product.
32. We would welcome further guidance from the Commission on how upfront financial benefits like welcome credits or gift cards should be factored into the AMP calculation. We recommend their monetary value is incorporated into the total costs over the 12 months calculation by subtracting their value, to get a true cost over the first 12 months.

Non-Financial Product Benefits

33. Innovation through differentiated product offerings is a key feature of a competitive market. Products across the market range from no-frills basic services through to full service offerings that have a range of included benefits.
34. Prices charged by providers reflect the value offered by the package. This should be reflected in the AMP; otherwise, there is an implied favouring of plans with the lowest costs,

irrespective of their service quality. We propose an approach of promoting value where benefits are quantified and incorporated into the average monthly cost.

35. For example, where on-demand TV services or online music streaming services are included in a product, the AMP should take the retail value of these add-ons as a benefit to offset the cost over 12 months.

Costs Of Modems Should Be Excluded (Or Included) For All Plans

36. We recommend the Guidelines outline a standard approach to the inclusion of modems in the AMP. This is relevant because several providers allow customers to bring their own modem when they join a broadband plan. However, performance can be affected by the customer's modem choice and the device age, and not all BYOD modems will be compatible with the customer's chosen fibre plan.
37. Whether or not a customer needs to buy a new modem for their chosen broadband plan depends on what technology and provider the customer was previously on, their current modem model, and its compatibility with their chosen plan.
38. Most providers recommend a specific fibre or wireless modem so the customer can get the best out of their service. The provider's support teams can also provide better support to customers using the recommended modem as they understand the expected performance and setup.
39. Excluding optional modems will present a misleadingly low AMP for customers who wish to buy a fibre modem when signing up to a broadband plan. To create a level playing field, we recommend the Commission excludes (or includes) modem costs for all broadband services, irrespective of whether the modem is a 'mandatory' component of taking up the broadband plan.

Taking Account of Device Payment Periods

40. If upfront device charges are included in the AMP, the Guidelines may need to take account of different periods of payment. For example, a device can be purchased upfront or via an interest free payment (IFP) plan over 12 months, 18 months or 24 months. Other payment mechanisms and timeframes are possible.
41. Payments longer than 12 months will impact the first year's AMP; ie, a smaller amount is required to be paid over the first 12 months, compared to an IFP over 12 months, which reflects the entire cost of the device within that period. The impact of AMP regulation could result in providers being incentivised to only offer longer repayment periods for device repayments to lower the initial 12 month AMP.
42. We propose an approach where upfront device costs are excluded for plan AMPs. An alternative would be to simply use the upfront cost of the device and ignore the payment options for the purpose of the AMP.

Modem Rental

43. Some providers rent a modem to customers, rather than the customer purchasing it outright or via a payment plan. We note that monthly modem rental charges will be factored into the AMP calculation, but could be misleading unless it is made clear to the customer that they will not own the modem at the end of their payment period.

Shipping Costs

44. We consider shipping costs for devices should be excluded, even for mandatory items. Costs for shipping can vary depending on whether the customer is rural or urban, and some providers have click-and-collect option at their retail stores. Therefore, any particular shipping cost would not be applicable to every customer.

Applicable Services

45. The Commission has surveyed residential consumers, so we assume the approach proposed is only for residential plans. Expanding beyond residential consumers will add considerable complexity, and we consider businesses are able to calculate their own AMP, taking into account elements that are important for them.

The Calculation

46. The Guidelines propose a calculation based on the total mandatory costs (including all upfront charges, recurring prices and initial discounts) over the first 12 months divided by 12.
47. There should be consistency in how an AMP is calculated where pricing terms are something other than annual, monthly or daily. For example, a fortnightly pricing construct will not neatly fit in to 12 months, and the number of payments made in the first 12 months might result in some days spilling over to the second year.
48. We suggest that where prices are for multiple days, the equivalent pro-rata rate per day should be calculated. For example, if the price is \$28 over 28 days, a daily rate of \$1 should be used.
49. For daily pricing we recommend a standard 365 day year is used, rather than having to change the calculations where a leap year falls within the next 12 months. Additionally, the Guidelines should state how the AMP is rounded.

Total Minimum Cost

Concept

50. We support clear information being presented to customers at checkout to confirm the items they are about to purchase. However, we have some specific concerns around the proposal to present this summary with costs shown over 12 months.
51. In our view, the title 'total minimum cost' could be misleading as the customer may not stay with the provider exactly twelve months, and some of the elements of the product may change over this period. We suggest a title of 'expected cost over the first 12 months' or 'predicted costs over the first 12 months' would be clearer and more accurate.

12 Months

52. We agree a common time period is needed so that plans can be compared. Using 12 months as the price comparison period introduces some challenges, but in our view is probably an appropriate compromise if the Commission mandates a standard time period.

Device Payments

53. The Commission proposes that if the customer takes an IFP it must show the plan costs, and other costs, over the IFP period. This creates some strange outcomes.

54. Take for example, a \$2000 phone purchased to be used on a \$50/month plan:
- a. Upfront purchase: \$2,600 (device cost of \$2,000 plus \$600 in plan charges)
 - b. 12 month IFP: \$2,600 (device cost plus \$600 in plan charges)
 - c. 18 month IFP: \$2,900 (device cost plus \$900 in plan charges)
 - d. 24 month IFP: \$3,200 (device cost plus \$1,200 in plan charges)
 - e. 36 month IFP: \$3,800 (device cost plus \$1,800 in plan charges)
55. In this example, the difference in the total cost between these IFP periods is not the device costs but the plan charges. They are not a direct comparison because each includes a different length of paying for the plan ; ie, the difference between a 12 month IFP total cost and a 36 month IFP total cost is solely due to the difference of two years' of plan charges.
56. We think this may be misleading because customers can change plan at any time – and even if they were on a 12 month IFP and were to switch providers after this period, they would still be paying for a plan for the second and third year.
57. We suggest devices (and their IFPs) are treated separately so they are itemised (and if necessary summarised) but are not part of a single aggregated 12 month summary.

Bundles and Discounts

58. As mentioned above, bundles and discounts can apply in different ways and may not fit the Commission's proposed templates. We are not sure how we would show offers or discounts, for example, our Team Up mobile discount,¹ in the proposed construct. With Team Up, customers can save up to 35% on all Team Up-eligible plans under the same customer number. These are ongoing monthly savings. This may prove challenging to present in the format required, as there is complexity in how the information is calculated and displayed. We would welcome guidance on how this should be presented in the 12 month pricing breakdown.
59. Additionally, at any time a customer may add a new item to their account which entitles them to a discount on another part of their service. It's unclear how the checkout for the new item should present a discount that may be applied to another existing product on the customer's account (or on another customer's account for Team Up) and not part of the checkout process.

Unknown Elements

60. There will sometimes be parts of the product which we don't know at the time of checkout – for example, non-standard installation charges that will be agreed with the customer separately. It's unclear whether these should be included in the listing.

Add, Changes, Moves

61. Customer journeys can include product upgrades and downgrades, change of address etc. We recommend the checkout summary is only required to be shown when the customer first purchases a product; otherwise, we risk creating very complex summaries which need to cover an almost unlimited number of scenarios.

¹ <https://www.spark.co.nz/shop/mobile-plans/team-up/>

Implementation

62. Implementation of a new template for checkout information will require significant development. It will require us to implement the calculation for every product and variant (which will need to be kept up to date as product specifications change over time). It will also require us to make changes to our website and our checkout journeys across our various sales channels. We would need to train our frontline staff to understand the new requirements and to ensure they present the right information to customers.
63. As with all changes, we will need to perform a feasibility study once we have the final design to understand the cost and time to deliver this new requirement. Based on the current proposals, our very rough estimate is that planning for and executing this change is likely to require at least 6 months.

Offer Summaries

Concept

64. Spark is a signatory to the TCF Product Disclosure Code, which defines the current disclosure regime for broadband.
65. We have not seen evidence that Offer Summaries are of particular interest to consumers - we currently only get a few hundred views of individual Offer Summaries for our broadband plans each month, despite them being prominently linked on each of our broadband plan cards. We have not seen overwhelming evidence of the need to extend Offer Summaries to mobile services.

Separate Terms and Conditions

66. Spark's broadband Offer Summaries are also our Terms and Conditions² for those products (along with our General Terms and our Fixed Line/Mobile and Wireless terms). We took this approach as the Offer Summaries' content in large part matched what we needed to include in our customer contracts, so it made sense to combine them, rather than duplicate the information. We recommend removing the requirement that Offer Summaries be separate to terms and conditions (cl. 21.8), or clarifying this section so that the Offer Summary may form part of the provider's Terms and Conditions.
67. We also note that the Offer Summary template must assume a standard format for products. This has the potential to reduce innovation to the extent that providers need to design their products to fit a product template. A regulatory approach to defining how retail products should be structured should be subject to wider consultation, as it would represent a departure from the current regulatory approach of allowing competition to drive market innovation.

Tailored Offer Summaries

68. Cl.25 of the Guidelines suggests that providers must have a tailored Offer Summary for each customer based on the purchased product options. This would require considerable system development to automatically create tailored Offer Summaries which, for example, exclude optional add-ons that the consumer has not selected.

² <https://www.spark.co.nz/help/other/terms/personal-terms/>

69. Many Spark products have optional add-ons which the customer can enable at any point. Depending on the plan purchased, a customer may have access to benefits related to Netflix, Spotify, Neon, McAfee Security Suite, Broadband Outage Assist, Xbox All Access and Spark Arena. Customers can easily turn these on and off during the life of their plan.
70. We suggest that the customer's checkout information, which would include Total Minimum Cost, and the standard Offer Summary, should be sufficient.

Administrative Overhead

71. Offer Summaries create a large administrative burden to create and update. It's important therefore that they focus only on the key things for consumers, and that Offer Summaries can be combined into sensible product families.
72. We do not currently keep old copies of Offer Summaries. The most recent Offer Summary for each plan is available to the customer at any time. Moving to 'versioning' of Offer Summaries and keeping historical copies will require significant system and process development.
73. The time taken to create new Offer Summaries for our various mobile plans should not be underestimated, and we submit that providers should be given enough time to create their Offer Summaries.
74. For practical reasons we submit that the Offer Summaries regime only applies to new plans, and updated or new Offer Summaries would not be required for legacy plans or other plans no longer available to purchase.

Number of unique Offer Summaries

75. If the idea of an Offer Summary is for customers to be able to compare options, then having similar plans on the same Offer Summary may help consumers if they can be presented in a clear way.
76. The definition of what is a 'plan' will also be important. For example, we may have one plan with multiple price points depending on the amount of included data. We can greatly reduce the proliferation of Offer Summaries if we can combine sub-options of a plan on the same Offer Summary.

Complexity Of Offer Summaries

77. The amount of information needed for each Offer Summary and the requirement for this information to be both legible, accessible to people with vision impairment, and fit on two sides of A4 is likely to be a challenge. Given the amount of information required, we suggest including a link from the Offer Summary to more comprehensive information on many items, so it can be presented in a way that makes the information easier to understand.
78. We would be happy to work with the Commission to create some mock-ups of Offer Summaries for a range of different plans to show how the information could be displayed, and test these with consumers for intelligibility.
79. Similarly to our comments on the impact of the Guidelines on innovation, the prescribed structure of Offer Summaries has the potential to constrain how providers structure their plans. As an example, our Team Up savings do not easily fit within an Offer Summary template.

Availability of Offer Summaries

80. We can incorporate Offer Summaries into our online journeys (with some system changes) but are unclear on the practical requirements to give consumers a reasonable opportunity to review the Offer Summaries for other channels such as in-store, door-to-door and phone sign-up. It would not be practical for our reps to carry paper copies of Offer Summaries for all our products, and it is impractical for agents to read out the Offer Summary content for people signing up by phone. We wonder if the appropriate requirement is that Offer Summaries are available to read on the provider's website, and leave it to the customer to read them if they are interested.
81. Providers sometimes have products or offers which they do not market above the line. We accept that Offer Summaries should be made available to customers of these plans, but they should only need to be provided to customers of these products, and these Offer Summaries should not need to appear on the public area of the provider's website.

Performance Information

82. Including performance information in the Offer Summary (Cl. 20.2.1) creates complexity as this would require us to update all our Offer Summaries every time a new MBNZ report is published. It already takes considerable resource to update our marketing every few months with new speed numbers for broadband from the MBNZ report.
83. We propose an approach where only network access information is required to be included in the Offer Summary (eg fibre broadband, fixed 4G wireless, fixed 5G wireless, etc). This would considerably reduce the administrative overhead of continually updating Offer Summary speed information.

Discounts and Short Term Offers

84. We propose an approach similar to the existing TCF Broadband Product Disclosure Code where the Offer Summary does not need to be updated to reflect limited time special promotions (including pricing offers), provided that the promotional offer results in terms that are advantageous to consumers compared to those shown in that plan's Offer Summary. This would greatly reduce the administration associated with updating Offer Summaries for short term offers.